

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
HTV/HTN/Hawaiian TV Network, Ltd.	)	File Number EB-08-HL-0089
	)	
Licensee of Class A Television Station KHLU-LP	)	NAL/Acct. No. 200932860002
Honolulu, Hawaii	)	FRN 0003787835
Facility ID # 27969	)	

**FORFEITURE ORDER**

**Adopted: May 5, 2010****Released: May 7, 2010**

By the Regional Director, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of one thousand dollars (\$1,000) to HTV/HTN/Hawaiian TV Network, Ltd. (“HTV”), licensee of station KHLU-LP, in Honolulu, Hawaii, for willfully and repeatedly violating Sections 73.1225(a), 73.1125(c) and 73.3526 of the Commission’s Rules (“Rules”).<sup>1</sup> On March 27, 2009, the Enforcement Bureau’s Honolulu Resident Agent Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of \$24,000 to HTV for failing to make the station available for FCC inspection, failing to maintain an accessible local main studio in its community of license, and failing to make the KHLU-LP public inspection file available for public inspection during regular business hours.<sup>2</sup> In this *Order*, we consider HTV’s request that we reduce the forfeiture amount based on its inability to pay.

**II. BACKGROUND**

2. On October 28, 2008 and again on October 29, 2008, Honolulu agents attempted to conduct a station inspection of the KHLU-LP main studio, which is co-located with their transmitter at the shared Salem Communications site on Palehua Ridge, Oahu, Hawaii.<sup>3</sup> The agents observed two locked gates prohibiting public vehicular access en-route to the transmitter site. The KHLU-LP transmitter site was enclosed by a locked chain-link fence, and there were signs posted on the fence to warn the public not to approach because of the danger of exposure to high electromagnetic fields. The agents did not have keys to access the site, and attempted to contact KHLU-LP by telephone. There was neither a studio address nor telephone listing for KHLU-LP in the Oahu Hawaiian Telcom Directory. An agent called the phone number listed for “HTV/Hawaiian Television,” and was connected to an answering machine. The agent left a message identifying himself only by his first name, provided a call back number, and requested access to the KHLU-LP public inspection file. Not receiving any response, the agents waited at the site for an additional hour, without result. The agents did not observe any vehicles

<sup>1</sup> 47 C.F.R. §§ 73.1225(a), 73.1125(c), 73.3526.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200932860002 (Enf. Bur., Western Region, Honolulu Resident Agent Office, released March 27, 2009).

<sup>3</sup> Salem Communications of Hawaii, Inc., is the licensee of KAIM-FM.

indicating the presence of station personnel at the studio, and were able to ascertain that the studio was locked and unoccupied.<sup>4</sup>

3. On November 12, 2008, an agent of the Honolulu Office attempted to contact HTV by telephone, and left a message on the answering machine requesting to inspect KHLU-LP and its main studio and public inspection file on November 18, 2008, at 10 a.m. The agent specifically identified himself as an FCC agent, provided a call back phone number, and requested that station personnel meet him at the first locked gate en-route to the KHLU-LP studio site. The agent did not receive any response to his request.

4. On November 18, 2008, Honolulu agents waited at the specified locked gate from 9:55 a.m. until 11:00 a.m. No KHLU-LP personnel arrived during this period.

5. On March 27, 2009, the Honolulu Office issued a *NAL* in the amount of \$24,000 to HTV, finding that HTV apparently willfully and repeatedly violated Section Sections 73.1225(a), 73.1125(c) and 73.3526 of the Rules<sup>5</sup> by failing to make the station available for FCC inspection, failing to maintain an accessible local main studio in its community of license, and failing to make the KHLU-LP public inspection file available for public inspection during regular business hours.<sup>6</sup> HTV filed a response (“*Response*”) on May 22, 2009.<sup>7</sup> In its *Response*, HTV does not dispute the violations identified in the *NAL* but requests that the forfeiture amount be reduced based on its inability to pay.

### III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act,<sup>8</sup> Section 1.80 of the Rules,<sup>9</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”).<sup>10</sup> Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>11</sup> As discussed below, we find that a reduction of the forfeiture amount from \$24,000 to \$1,000 based on HTV’s documented inability to pay is appropriate.

7. Section 73.1225(a) of the Rules states “[t]he licensee of a broadcast station shall make the station available for inspection by representatives of the FCC during the station’s business hours, or at any time it is in operation.”<sup>12</sup> Honolulu agents called the licensee’s listed telephone number during regular business hours and requested access to the station on October 28, 2008, October 29, 2008, and November 12, 2008. No response was received to any of these requests. The Honolulu agents initially attempted to inspect

<sup>4</sup> The agents were able to bypass the locked gate and access the KHLU-LP studio on-foot.

<sup>5</sup> 47 C.F.R. §§ 73.1225(a), 73.1125(c), 73.3526.

<sup>6</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200932860002 (Enf. Bur., Western Region, Honolulu Resident Agent Office, released March 27, 2009).

<sup>7</sup> HTV requested and received an extension of time to respond to the *NAL*.

<sup>8</sup> 47 U.S.C. § 503(b).

<sup>9</sup> 47 C.F.R. § 1.80.

<sup>10</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>11</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>12</sup> 47 C.F.R. § 73.1225(a).

the KHLU-LP main studio on October 28, 2008 and October 29, 2008, but found the studio unattended and locked. Finally the Honolulu agents gave HTV six days prior notice of their planned station inspection and requested that KHLU-LP personnel meet them to conduct a KHLU-LP station inspection on November 18, 2008. Despite repeated attempts to contact KHLU-LP by phone and in person at their main studio, HTV failed to make KHLU-LP available for inspection by the FCC agents.

8. Section 73.1125(c) of the Rules requires the licensee of a Class A television station to maintain a main studio within the station's predicted Grade B contour.<sup>13</sup> The station's main studio must serve the needs and interests of the residents of the station's community of license. In particular, the main studio must be accessible to the public during normal business hours "[t]o assure meaningful public participation in [the Commission's] licensing process."<sup>14</sup> To fulfill these functions, a station must, among other things, maintain a meaningful managerial and staff presence at its main studio.<sup>15</sup> The Commission has defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel.<sup>16</sup> In addition, there must be "management and staff presence" on a full-time basis during normal business hours to be considered "meaningful."<sup>17</sup> Although management personnel need not be "chained to their desks" during normal business hours, they must "report to work at the main studio on a daily basis, spend a substantial amount of time there and ... use the studio as a home base."<sup>18</sup> The site held out by HTV as the main studio location for KHLU-LP had no public access, and no staff presence.

9. Section 73.3526(b) of the Rules requires Class A broadcast stations to maintain a public inspection file and that the file be located at the main studio of the station.<sup>19</sup> Section 73.3526(c) of the Rules requires that the file be available for public inspection at any time during regular business hours.<sup>20</sup> On October 28, 2008, October 29, 2008, and November 18, 2008, Honolulu agents attempted to inspect the file during regular business hours but were unable to access the file.

10. HTV does not dispute the violations listed in the *NAL*. Instead, it argues that it lacks the ability to pay the proposed forfeiture and submits its three most recent years of tax returns to substantiate its claim. In analyzing a financial hardship claim, the Commission generally has looked to gross revenues as a reasonable and appropriate yardstick in determining whether a licensee is able to pay the assessed forfeiture.<sup>21</sup> While we find that HTV willfully and repeatedly violated Sections 73.1225(a), 73.1125(c) and 73.3526 of the Rules, we conclude that pursuant to Section 503(b) of the Act and the *Forfeiture Policy Statement*, reduction of the forfeiture to \$1,000 is warranted based upon its documented inability to pay. Although we are reducing the forfeiture amount, we order HTV to file a report with the Honolulu Office detailing its compliance with Sections 73.1225(a), 73.1125(c) and 73.3526 of the Rules, within 30 days of the date of this *Order*.

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<sup>13</sup> 47 C.F.R. § 73.1125(c).

<sup>14</sup> *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3218 (1987), *clarified* 3 FCC Rcd 5024, 5026 (1988).

<sup>15</sup> 2 FCC Rcd at 3217-18.

<sup>16</sup> *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991), *clarified* 7 FCC Rcd 6800 (1992).

<sup>17</sup> *Id.*

<sup>18</sup> 7 FCC Rcd at 6802.

<sup>19</sup> 47 C.F.R. § 73.3526(b).

<sup>20</sup> 47 C.F.R. § 73.3526(c).

<sup>21</sup> *See PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992).

#### IV. ORDERING CLAUSES

11. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, HTV/HTN/Hawaiian TV Network, Ltd., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$1,000 for willfully and repeatedly violating Sections 73.1225(a), 73.1125(c) and 73.3526 of the Rules.<sup>22</sup>

12. **IT IS FURTHERED ORDERED THAT**, within 30 days of the release of this *Order*, HTV/HTN/Hawaiian TV Network, Ltd., file with the Honolulu Resident Agent Office, the report required in paragraph 10 above.

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>23</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. HTV/HTN/Hawaiian TV Network, Ltd., will also send electronic notification on the date said payment is made to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to HTV/HTN/Hawaiian TV Network, Ltd. at its address of record.

#### FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau

<sup>22</sup> 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.1225(a), 73.1125(c), 73.3526.

<sup>23</sup> 47 U.S.C. § 504(a).